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May 27, 1983

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MEMORANDUM

TO: Philip Morris/Barclay Files  
FROM: Hadrian R. Katz  
RE: May 27, 1983 Meeting With Jack Carley

Jerome Chapman and I met on Friday morning with Jack Carley and Jerold Cummins of the FTC legal staff in connection with Brown & Williamson's modified Barclay advertising. The session was devoted largely to our argument that enforcement action, including a preliminary injunction action, should commence promptly. Carley indicated that he personally thought that enforcement action was appropriate, but stated that the decision would be made by the commissioners, and his opinion had not yet been sought.

Carley inquired whether we thought the prior pending action in Louisville raised any obstacle to enforcement proceedings, and we explained that the matters were completely separate. Carley added that he thought the sealing of the Louisville record was a complicating factor, although it was agreed that documents

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could be filed under seal in a new action, and the new judge would have to decide how to deal with matters. Carley indicated some discomfort about going forward with enforcement action while public comments are still being solicited on modifying the smoking machine, and we explained that the issues on which comments were solicited and the issues decided in an enforcement action would be fundamentally different.

There was some discussion of the foreign Barclay opinions. Brown & Williamson has apparently been indicating that it won great victories in Belgium, Switzerland, and perhaps Holland, and Carley and Cummins expressed some concern that statements in foreign opinions might reflect adversely upon the PPA and other evidentiary sources relied upon by the FTC's consultants. We explained the chronology of the Swiss proceedings in some detail, and assured Carley that no court has expressed approval of the merits of Brown & Williamson's scientific arguments. We added that, of course, even if some foreign judge did sustain Brown & Williamson's position, that should not be an obstacle to the Commission's moving forward on the basis of its year-long investigation and complete factual record.

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Carley said that his own views were well known within the FTC. He does not believe that Brown & Williamson will ever bring its Barclay advertisements into compliance without a court order. He added that he has had some informal discussions with members of the Commission, but has not been asked for a formal opinion, and is reluctant to say too much because of rumors spread by London that Carley is out to get Brown & Williamson.

We discussed the possibility of a corrective press release as an interim step in the event some delay would be involved in the commencement of enforcement action. We gave Carley a draft. Carley indicated that he thought that something of that sort was in order, because silence by the Commission could be viewed as acquiescence in the current advertising.

Carley stated that of course the ultimate decision makers would be the members of the Commission, based on recommendations from the Bureau staff. He noted that we might wish to try to arrange meetings with the individual commissioners. Carley observed that the Commission has already begun to work toward a vacation beginning August 1. He thought that the Commission would likely come to some conclusion about action to be taken regarding Barclay before then

cc: Abe Krash  
Jerome I. Chapman  
G. Carlton Adkins

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